

**U.S. ENVIRONMENTAL PROTECTION AGENCY**  
**CAFO PUBLIC MEETING—DENVER, COLORADO**  
**MARCH 27, 2001, 1:00 TO 5:00 PM**

On December 15, 2000, former U.S. Environmental Protection Agency (EPA) Administrator Carol Browner signed proposed revisions to the National Pollutant Discharge Elimination System (NPDES) Permit Regulations and the Effluent Limitation Guidelines and Standards (ELG) for Concentrated Animal Feeding Operations (CAFOs). The proposed revisions revise and update the two regulations that address impacts on water quality from manure and process waters generated by CAFOs. EPA published these proposed revisions in the *Federal Register* on January 12, 2001, at 66 FR 2959.

EPA held eight public information meetings in different cities across the country. The purpose of these meetings was to enhance public understanding of the proposed changes to regulations for CAFOs. At each meeting, EPA presented an overview of the proposed regulations and responded to questions and requests for clarification from attendees.

These informational meetings were not part of the public comment process. Any comments that citizens or groups wish EPA to consider as part of the rulemaking process must be submitted in accordance with the requirements specified in preamble to the proposed rule. The public comment period extends until July 30, 2001. In Denver, Sheila Frace and Paul Shriner from the Office of Science and Technology and Ginny Kibler from the Office of Wastewater Management, presented the overview of the proposed CAFO rule revisions.

The summary below is an overview of statements made by the public participants at the informational meeting. These notes are not intended to be a verbatim transcript or a comprehensive record of the meeting; rather, they are intended to identify the participants at this meeting, the issues of concern, and the general nature of the questions asked and the answers provided. The summary is organized by order of questioner.

**MEETING SUMMARY**

**Presenters:** Sheila Frace, Director, Engineering Analysis Division, Office of Science and Technology, Office of Water, USEPA; Ginny Kibler, Office of Wastewater Management, Office of Water, USEPA; Paul Shriner, Office of Science and Technology, Office of Water, USEPA

**Moderator:** Jody Ostendorf, Public Affairs Specialist, USEPA, Region 8

**Panelists:** Debra Thomas (USEPA Region 8), Sheila Frace, Ginny Kibler, Paul Shriner

**Approximate number of public participants:** 70

**Attendees:** The attendees were predominantly state agency representatives, agriculture experts, agriculture trade representatives, and consultants. Also in attendance were beef and dairy producers and representatives of environmental organizations.

**Meeting Opened:** 1 PM

**Questioning Began:** 2 PM

**Meeting Adjourned:** 5:00 PM

**SUMMARY OF QUESTIONS AND ANSWERS**  
(By order of questioner)

*The following are notes of this proceeding. EPA does not have a verbatim transcript of the proceeding.*

**1. Brad Walker, soil scientist, Independent Consultants of Colorado**

**Q:** Why are soil samples required only every 3 years instead of every time manure is applied? Soil sampling is key to ensuring application at agronomic rates. Testing for nitrogen is useful in the West.

**A:** EPA is focused on the buildup of potassium and phosphorus. Sampling every 3 years is a good balance between cost and the ability to develop adequate data.

**Q:** Does EPA know if there is a sufficient number of agricultural consultants to write certified nutrient management plans (CNMPs)?

**A:** Yes. The Agency has a list of organizations willing to enter into a Memorandum of Understanding (MOU) with the U.S. Department of Agriculture (USDA) to become certified to write plans.

**2. Mike Hawkins, Terracon**

**Q:** Does EPA believe that zero discharge is an attainable standard? It appears to be a Catch-22 to require operators to certify that they have no hydrologic connection if it is not an attainable standard.

**A:** Zero discharge applies to the production area only, not to the land application area. The performance standard for no discharge to groundwater is based on the use of a synthetic liner.

**Q:** Why are there different standards regarding discharge from a 25-year, 24-hour storm for different species?

**A:** Different standards result from the different economic impacts of the 25-year, 24-hour storm discharge provision on the distinct industry sectors.

**Q:** Do the states adopt these proposed rules? How will the regulations be administered?

**A:** NPDES-authorized states must revise their programs, if necessary, to be as stringent as the revised regulations. States will have 1 or 2 years (depending on whether they need to make a statutory change) to revise their program and an additional year to issue a general permit.

**Q:** Given the complexity of the proposal, does EPA plan to repropose this rule before it is issued as final?

**A:** No, not currently.

**3. Dustin Cushman, cattle producer in Wyoming**

**Q:** Are there sufficient funding and personnel to implement the revised regulations, and are the regulations necessary since Wyoming presently has stringent CAFO rules?

**A:** Sufficient funding is always a concern. Some Clean Water Act (CWA) grants are available, and general permits will be issued to minimize implementation costs.

**Q:** Does EPA believe that the revised regulation will remain focused on large operations? It appears that it could be used to burden small operations.

**A:** EPA's intention is for the revised rules to address primarily large operations, and the Agency is working with USDA to make voluntary programs available to small operations.

#### **4. Tim Erickson, lobbyist for dairy farmers**

**Q:** Does the rule address animal mortality, and what is allowed for under-surface burial?

**A:** The rule provides that mortality must be managed to prevent discharge of pollutants to surface water. EPA lacks data to establish a more specific standard. Many states have existing standards. This issue is also addressed in the CNMP.

**Q:** What about air quality standards?

**A:** EPA's Office of Air is examining air quality issues associated with CAFOs. However, the proposed rule does not include specific air standards.

**Q:** Is EPA presently conducting compliance monitoring activities for CAFOs?

**A:** Region 8 is developing a CAFO inventory on tribal lands and is working with the state to conduct inspections in Colorado.

#### **5. Jeanne Goodman, South Dakota Department of Environment and Natural Resources**

**Q:** Based on EPA data, where should states spend their resources to best protect water quality? South Dakota's experience is that voluntary programs have been successful for smaller operations.

**A:** Focusing on larger CAFOs (1,000 animal units [AU] and above) appears to result in the greatest reduction in water pollution. States should also consider the risk criteria identified in the proposed rule.

#### **6. Christopher Knud-Hansen, Geo Explorers International, Inc.**

**Q:** The use of zeolites balances nitrogen with phosphorus, absorbs ammonia, and when mixed with manure creates a valuable slow-release fertilizer (cat litter solution).

**A:** Is this technology affordable?

**Response from Questioner:** For one 200-head dairy it was \$350 a ton, resulting in the dairy making more money from the fertilizer than from milk production. This solution is not widely known in the United States.

#### **7. Jon Ungerer, Wyoming Department of Agriculture**

**Q:** Has EPA eliminated the criterion for discharge from a man-made conveyance?

**A:** Under the two-tier approach, EPA has eliminated the middle category (with associated risk criteria).

#### **8. Ginger Davidson, Colorado Corn Growers Association**

**Q:** Is there money available to help producers comply with recordkeeping requirements?

**A:** AFOs have access to the State Revolving Fund (SRF), section 319 money, and USDA's Environmental Quality Incentives Program (EQIP). CAFOs, being point sources, may be able to use some EQIP funds, but they will not have access to funding from EPA.

**9. Gene Fuchs, risk manager for a farming operation**

**Q:** Once a facility makes the changes required under the proposed rule, who is the final approval authority?

**A:** NPDES-authorized states or EPA (where a state is not authorized to administer the NPDES program).

**10. Rich Hergert, American Registry of Professional Animal Science**

**Q:** Water quality protection should be whole-farm based. Does the permit nutrient plan (PNP) have a feed management component?

**A:** Feed management is not required, but it could help prevent water pollution. The USDA Natural Resource Conservation Service (NRCS) also promotes consideration of feed management.

**Q:** Who will develop and certify the nutrient management plans (NMPs)? I support plans that will cover the management of CAFO wastes and will not be changed before fully implemented. Does EPA have an implementation plan?

**A:** EPA is working with USDA to develop a certification program. MOUs with the private sector also appear to be sufficient to ensure that there are enough certified planners to address CAFOs.

**11. Charles Scott, Bakercreek Cattle Co., Wyoming**

**Q:** Do the proposed regulations apply to us in winter (we confine cows on a smaller area of pasture closer in, 4 acres per cow)? I suggest that EPA use a density criterion in its CAFO definition.

**A:** It is not EPA's intent to cover such operations. EPA intended to address situations where cattle are so highly concentrated that there is little else in that feeding area.

**Q:** Are cattle confined for weaning (4 to 5 days) covered?

**A:** No, because they do not meet the 45-day confinement criterion.

**Q:** Where heifers are brought in to calf, are both the heifer and the calf counted?

**A:** EPA has not considered this situation. Please submit comments that raise this issue.

**Q:** Has EPA considered that the setback requirement may be hard to meet because of the historical location of existing facilities? Our congressional delegation has requested public hearings in Wyoming.

**A:** [No answer.]

**12. Sue Jarrett, rancher**

**Q:** Is the 45-day confinement (animal feeding operation) criterion consecutive or total? If total, EPA should change it, because we (150-cow/calf operation) are not your problem CAFOs.

**A:** Total.

**Q:** Does EPA understand that the economic impact of the proposed rule is quite different for an independent producer versus an integrated operation?

**A:** Yes.

**Q:** Is EPA addressing pathogens or salts?

**A:** The zero discharge standard applies to all pollutants (for the production area). The NMP will address the land application area. The proposed rule contains no specific pathogen standards. However, the 100-foot setback helps limit metals and pathogens.

**Q:** Does the rule address mortalities, since many states do not address this issue?

**A:** Only generally, requiring that the management of dead animals must not result in water quality impairment.

### **13. George Hopkin, Utah State Department of Agriculture**

**Q:** If EPA has lots of data, who was at the table developing these regulations? Does the court order say that only EPA can develop these regulations? NRCS should be involved. More people who are familiar with agriculture should be involved.

**A:** EPA does not have all of the data it would like to have. EPA has collected a substantial amount of available data, but a lot of issues remain. The court order requires EPA to revise its CAFO regulations. EPA staff and management develop rules pursuant to the Administrative Procedure Act and other laws and executive orders. For the CAFO rules, EPA formed a workgroup that included some USDA (including NRCS) people, as well as state people. USDA staff were somewhat reluctant to participate in aspects of the rulemaking because USDA is generally a nonregulatory agency.

**Q:** Why are the proposed standards more stringent than those applicable to a wastewater treatment system?

**A:** That is not correct. Wastewater treatment plants require treatment of effluent. EPA considered requiring certain CAFOs to treat their waste, but concluded that this is too expensive. EPA would also note that the biosolids standards are more stringent than the proposed CAFO standards.

**Q:** Is EPA aware that the proposed rule will be costly to implement, and that Performance Partnership Agreements and other funds are not sufficient to pay for implementation? Thank you, but you missed your goal.

**A:** EPA is concerned about the cost of the proposed rule. EPA also wants feedback on whether estimates regarding the number of facilities covered by the proposed rule are accurate (i.e., will the criteria for two-tier facilities bring in more facilities than estimated?).

### **14. Chris Craft, dairy farmer, Colorado Livestock Association**

**Q:** For a large operation (a dairy with more than 1,000 AU), is the whole operation defined as a CAFO? Is a whole ranch defined as a CAFO?

**A:** Yes. However, outside of the production area, only lands used to apply manure and process wastewater are defined as the CAFO.

**Q:** How does EPA define “significant potential environmental discharge”? This could be used as a harassment tool.

**A:** The states determine this. EPA has suggested risk criteria, but the states will ultimately determine how and what constitutes “potential discharge.” A states decision should be published and, thus, be known to potential CAFOs.

**Q:** Does the CWA provide EPA with jurisdiction over ground water?

**A:** Yes, where pollutants are discharged to surface water via a direct hydrologic connection between ground water and surface water.

**Q:** How does EPA define direct hydrologic connection to surface water?

**A:** EPA is not sure how it should define this specifically in a national rule. Region 6 tried to be very specific, but comments suggested that a specific definition should not be included in the region's general CAFO permit.

**Q:** Can states decide not to issue individual permits?

**A:** Yes, but their programs must remain generally as stringent as the federal program.

**Q:** Is EPA aware that small operations may cause water quality problems too (i.e., that targeting just large operations misses this problem)?

**A:** States can designate problem CAFOs that are small.

**Q:** Is winter feeding of beef cattle on corn stalks (not other cover) defined as a CAFO?

**A:** EPA recognizes that it needs to clarify the language that addresses this issue. Specific recommended language is welcome.

**Q:** How does EPA define excess manure?

**A:** Excess following application at proper agronomic rates.

#### **15. Marshall Frasier, Colorado Livestock Association**

**Q:** Would co-permitting extend to me simply because my cattle use a feedlot I do not own or operate, since I own the animals?

**A:** Co-permitting is intended to regulate the vertical integration of poultry and swine. Please submit comments on co-permitting.

**Q:** If CAFOs over 1,000 AU are not being inspected on a regular basis, why does EPA want to permit facilities with less than 1,000 AU?

**A:** EPA is trying to clarify which facilities are covered under the regulations and which facilities are not covered. EPA is encouraging comments on thresholds. EPA is working with states to do a better job of implementing their programs.

**Q:** Is it worth increasing the economic administrative burden by regulating many more operations but relatively few more animals (viewed as percentages)?

**A:** This proposed regulation is not only for Colorado, it is a national rule. These thresholds make sense on a national level.

**Q:** Is this a method to get the addresses and locations of small operations?

**A:** No, that is not the intent of the regulation.

**16. Tripp Baltz, Bureau of National Affairs**

**Q:** What do you think the impact of these regulations will be with the new presidential administration?

**A:** The final rule will be well thought out, regardless of which administration oversees publication. EPA will receive both data and comments on the proposed rule. Both are considered by decision makers in developing a final rule.

**17. Behzad Mirzay, SSWM, Inc.**

**Q:** The threshold values seem random; what are they based on? Are there any cost-benefit analysis studies by EPA?

**A:** The cost-benefit estimates are described in the preamble of the rule and exist as background documents.

**Q:** Why are the thresholds not established on a regional basis rather than on a national basis?

**A:** The loadings model analysis is based on geographic regions, but was not done on a state-by-state basis.

**Q:** How does EPA define zero discharge?

**A:** Zero discharge is no discharge of pollutants from facilities to waters of the United States.

**Q:** Facilities have to produce a lot of data to prove no direct hydrologic connection. This can sometimes cost in excess of \$50,000.

**A:** EPA is not aware that such high costs would normally be associated with proving no direct hydrologic connection. Please submit comments on costs and alternatives.

**Q:** Education should be part of the regulations. Is any money available for education by 2006?

**A:** Education is occurring through USDA and state agencies. EPA is aware that it can make improvements in the area of education.

**18. Philip Brink, eMerge Interactive, Inc.**

**Q:** Did EPA receive any input for the proposed rule from any sale barn businesses?

**A:** No.

**Q:** Sale barns confine the majority of their animals under a roof, but they are not on feed. The proposed rule does not provide a distinction between a CAFO and a sale barn facility.

**A:** There is no distinction. EPA is trying to regulate the concentration of animals, both when kept under a roof and when in open lots. Sale barns are covered.

**Q:** How does the term “vegetative cover” define a facility as an animal feeding operation?

**A:** EPA hopes to clarify the language in the final rule. EPA encourages comments on modifying the language for “the growing season.”

**19. Galen Travis, Farmer in Colorado**

**Q:** Will the farmer be liable for excess manure that is transferred?

**A:** If you apply manure at a rate in excess of your permit, you are in violation. If you transfer the excess manure, both options specify that you must provide the nutrient content information to the recipient and

keep records of the transfer. You are not responsible for the recipient land applier's violations. The recipient, however, may be subject to EPA's Stormwater Regulations.

**Q:** Who is responsible when the manure is piped through a central pivot to a neighbor's land?

**A:** EPA only considered truck transfer of manure. Please submit comments.

## **20. Ray Christensen, Colorado Farm Bureau**

**Q:** On what basis does EPA have the authority to regulate off-site land application of CAFO manure?

**A:** Off-site land application can be regulated under Phase 1 and 2 Storm Water Regulations and under the Storm Water Discharges from Industrial Facilities Program.

**Q:** Where in the proposed rule does it state potential violations for storm water?

**A:** EPA will get back to you with regard to this issue.

## **21. Michael Hawkins, Verracon**

**Q:** Are chronic rainfall provisions included in the regulations?

**A:** The performance standards do not use the term chronic rainfall; however, the design specification is based on a threshold of runoff and process wastewater. If your facility is designed to hold the 25-year, 24-hour storm event but discharges due to chronic rainfall, your facility is not in violation.

**Q:** Does EPA plan to hold additional informational meetings?

**A:** There are no plans at present. There have been numerous requests for public hearings.